

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

_____)	
APB REALTY, INC.)	
)	
Plaintiff,)	Civil Action No.:
)	
v.)	
)	
LEBANON AND BLUE MOUNTAIN)	
RAILWAY, LLC,)	<u>COMPLAINT</u>
)	
Defendant.)	
_____)	

NATURE OF ACTION

1. This is an action seeking recovery for breach of contract damages related to the purchase and sale of 100 railroad cars.

2. This action also seeks declaratory relief confirming that a certain deposit provided by the Defendant to the Plaintiff, pursuant to that agreement was non-refundable, and therefore is not subject to any refund.

PARTIES

3. The Plaintiff, APB Realty, Inc. ("APB"), is a Massachusetts corporation, currently maintaining a place of business located at 28 Eagle Drive, Mashpee, Barnstable County, Massachusetts.

4. The Defendant, Lebanon and Blue Mountain Railway, LLC ("LBMR"), is a Pennsylvania limited liability company currently maintaining a place of business located at 241 East Chestnut Street, Cleona, Pennsylvania.

JURISDICTION AND VENUE

5. The breach of contract claims of the Plaintiff herein exceeds \$100,000.00 in principal, exclusive of costs and interest.

6. As the Plaintiff is a Massachusetts corporation, and the Defendant is a Pennsylvania company, and the amount in controversy exceeds the jurisdictional threshold, this Court has diversity jurisdiction over the claims contained herein pursuant to 28 U.S.C., Section 1332.

COUNT I
(Breach of Contract)

7. The Plaintiff repeats and realleges those allegations contained in paragraphs one through six contained herein.

8. On or about June 17, 2021, the Plaintiff and the Defendant entered into a contract for the purchase of 100 designated railroad cars for the purchase price of \$12,000.00 per car (the "Agreement").

9. Despite repeated requests by the Plaintiff for the Defendant to complete the terms of the Agreement, the Defendant has repeatedly and steadfastly failed and refused to complete the Agreement.

10. The Plaintiff has suffered damages as a result of the Defendant's breach of contract.

11. Accordingly, the Plaintiff is entitled to damages as a result of the Defendant's breach of the Agreement, plus interest, costs and reasonable attorney's fees.

COUNT II
(Declaratory Relief)

12. The Plaintiff repeats and realleges those allegations contained in paragraphs one through 11 contained herein.

13. On or about June 17, 2021, pursuant to the terms of the Agreement, the Defendant forwarded to the Plaintiff a deposit, specifically described as a “non-refundable” deposit in the amount of \$360,000.00 (the “Non-Refundable Deposit”).

14. As the Non-Refundable Deposit was specifically agreed to be a non-refundable deposit, and as the Defendant has failed and refused to perform pursuant to the Agreement, the Plaintiff is entitled to a declaratory Order confirming that the deposit is non-refundable, and that no deposit or a portion thereof needs to be returned to the Defendant.

15. Accordingly, the Plaintiff seeks a declaratory Order confirming that the Non-Refundable Deposit previously forwarded to the Plaintiff by the Defendant, does not have to be returned in whole or in part in any manner, to the Defendant.

WHEREFORE, the Defendant prays as follows:

1. That this Court enter judgment in the amount of the Plaintiff’s breach of contract damages, plus interest, costs and attorney’s fees;

2. That this Court issue a declaratory Order confirming that the \$360,000.00 Non-Refundable Deposit previously provided by the Defendant to the Plaintiff is in fact non-refundable, and no portion thereof needs to be returned to the Defendant;

3. That this Court order such other, further relief as it deems just and applicable.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

APB REALTY, INC.,
By its Attorney,

/s/ Howard B. D'Amico

Howard B. D'Amico, Esq.

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Dated: August 18, 2021